IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10196 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

WHITE SILCO PVT. LTD.

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 10196 of 2003
MR ANILKUMAR D MARU for Petitioner No. 1
MR SN THAKKAR for Respondent No. 1
MR JITENDRA MALKAN for Respondent No. 1,2-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 08/10/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The petitioner - M/s White Silco Private Limited is a small unit. Show cause notices dated 18.12.1998 and 3.2.1999 were issued by the Superintendent to the petitioner demanding differential duty of Rs.2,62,942/for the period from June to December 1998. The Deputy Commissioner of Central Excise, Bhavnagar confirmed the said demand of Rs.2,62,942/- and imposed penalty of Rs.40,000/- by an order dated 20.12.1999 which was upheld by the Commissioner (Appeals) by his order dated 19.3.2001. Having heard on the application for waiver of deposit of duty of Rs.2,35,000/- and having considered the financial hardship of the petitioner, the Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai ("CEGAT" for short) by its order dated 21.1.2002 (Annexure-B) directed the applicant petitioner to deposit Rs.1 lakh within one month from the date of receipt of the order. Thus, the petitioner was supposed to deposit amount of Rs.1 lakh by 21.2.2002. Instead the petitioner had deposited only Rs.50,000/- on 18.2.2002 by challan at Annexure-C and simultaneously applied before the CEGAT for extension of time to deposit further amount of Rs.50,000/- by first week of April 2002 (Annexure-D). As stated in this petition in para 3.6, the time to deposit remaining amount of Rs.50,000/- was granted till 10.4.2002. However, meanwhile, communal riots broke out in Gujarat. Therefore, the petitioner could not deposit remaining amount of Rs.50,000/- before 10.4.2002. Hence, for noncompliance of the predeposit order dated 21.1.2002 (Annexure-B) passed by it on earlier occasion, the CEGAT had dismissed the appeal of the petitioner by its impugned order dated 30.4.2002 (Annexure-E).

#. It is the case of the petitioner that as soon as it received the impugned order at Annexure-E dismissing its appeal for noncompliance of predeposit order, at the first instance, the petitioner had deposited remaining amount of Rs.50,000/- by challan on 1.7.2002 (Annexure-F) and submitted an application dated 5.7.2002 (Annexure-G) before the CEGAT for restoration of its appeal and decide the same on merits. However, the CEGAT rejected the said application of the petitioner by its impugned order dated 10.6.2003 (Annexure-A) mainly on the ground that it was not aware about the judgment of any court which says that the appeal has to be restored whenever any person deposits the amount. If that was to be accepted, then there was hardly any point in passing conditional

predeposit stay order and the order passed by the Tribunal in case of Sunil Kumar Ghosh Vs. CC 2002 (53) RLT 103 was not relied on on the ground that it was passed on facts of that case. Hence, this petition.

#. Learned counsel Shri Maru for the petitioner submitted that there was a delay of hardly two months and twenty days in complying with the predeposit order passed by the CEGAT by the petitioner. He submitted that in view of the predeposit order dated 21.1.2002 (Annexure-B) passed by the CEGAT the petitioner had deposited 50% of the amount i.e. Rs.50,000/- out of Rs.1 lakh at the first instance within the period of one month as ordered by the CEGAT, but due to its poor financial condition, the petitioner was not in a position to deposit remaining Rs.50,000/- immediately. Therefore, it had applied for extension of time which was in fact granted by the CEGAT. But, unfortunately, due to communal riots broke out in Gujarat, it could not deposit, remaining Rs.50,000/- by 10.4.2002. When the petitioner received the impugned order of dismissal of its appeal for noncompliance of predeposit order, then the petitioner had immediately deposited remaining Rs.50,000/- on 1.7.2003 with the authority, and, thereafter on 5.7.2002 it had applied before the CEGAT for restoration of its appeal which was dismissed for noncompliance of the order. Unfortunately, the learned CEGAT had dismissed the same on a hyper-technical ground. He, therefore, submitted that the impugned order at Annexure-E dated 30.4.2002 dismissing the appeal of the petitioner for noncompliance of the predeposit order and its subsequent order dated 10.6.2003 (Annexure-A) dismissing the restoration application of the petitioner be quashed and set aside. In support of his submission, Mr.Maru relied on two Division Bench's judgments of this Court; (1) Hussein Haji Harun Vs. Union of India, reported in 1995 (77) E.L.T. 803 (Guj.) and (2) S.T.Texturisers Vs. Union of India, reported in 2002 (142) E.L.T. 308 (Guj.).

#. In view of the peculiar facts of this case and in view of the aforesaid two binding judgments of this Court, Mr.Malkan, learned Standing Counsel for the respondents, was hardly in a position to oppose this petition.

#. Having heard the learned counsel for the parties and having carefully gone through the impugned orders at Annexure `E' and Annexure `A' respectively passed by the CEGAT, we are of the considered opinion that though there was a delay of about two months and twenty days in complying with the predeposit order passed by the CEGAT,

on peculiar facts and circumstances of the case, it should have granted the restoration application and restored the appeal of the petitioner which was dismissed by it on 30.04.2002 on the ground of non-compliance of the predeposit order.

#. In view of the above discussion, this petition is allowed and application at Annexure `G' for restoration of main appeal filed before the CEGAT is accepted by quashing and setting aside the impugned order Annexure `A' dated 10.06.2003 passed by the CEGAT. Once the application for restoration is accepted and that the impugned order at Annexure `A' passed on that application by CEGAT is quashed and set aside, then obviously the impugned order at Annexure `E' dated 30.04.02 passed by the CEGAT dismissing the appeal of the petitioner for non-compliance of the predeposit order has to be quashed and set aside and accordingly the same is also quashed and set aside in view of the fact that the entire amount of Rs. one lac was deposited by the petitioner as ordered earlier, by the CEGAT. Accordingly, the impugned order at Annexure `E' is also hereby quashed and set aside. Now the CEGAT will hear and decide the main appeal on merits which was dismissed by it on 30.04.02 for non-compliance of the predeposit order. Rule is made absolute. However, there shall be no orders as to costs.

(B.J.SHETHNA, J)

(SHARAD D DAVE, J)

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